

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 18-0515V

UNPUBLISHED

GLEND A RUSSELL,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: February 21, 2020

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Influenza (Flu) Vaccine; Tetanus
Diphtheria acellular Pertussis (Tdap)
Vaccine; Shoulder Injury Related to
Vaccine Administration (SIRVA)

Bridget Candace McCullough, Muller Brazil, LLP, Dresher, PA, for petitioner.

Laurie Wiesner, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

On April 9, 2018, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the “Vaccine Act”). Petitioner alleges that she suffered a right shoulder injury as a result of her October 25, 2016 influenza (“flu”) and tetanus-diphtheria-acellular pertussis (“Tdap”) vaccinations. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On April 2, 2019, a ruling on entitlement was issued, finding Petitioner entitled to compensation for her right shoulder injury. On February 18, 2020, Respondent filed a proffer on award of compensation (“Proffer”) indicating I should award \$52,793.44, representing compensation to Petitioner in the amount of \$52,500.00 for her past and future pain and suffering and a payment in the amount of \$293.44 for full satisfaction of

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

Medicaid payments made by the State of California. Proffer at 1-2. In the Proffer, Respondent represented that Petitioner agrees with the proffered award. *Id.* at 1. Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, I award **\$52,793.44** as follows:

1. A lump sum payment of \$52,500.00, representing compensation for her actual and projected pain and suffering, in the form of a check payable to Petitioner; and

2. A lump sum payment of \$293.44, representing compensation for full satisfaction of the Medicaid payments made on behalf of Petitioner in the form of a check payable jointly to Petitioner and

**State of California Health and Human Services Agency
Department of Health Care Services
Third Party Liability and Recovery Division
Class Action Unit, MS4720
P.O. Box 997425
Sacramento, CA 95899-7425
DHCS Account No.: C90722589F-VAC03**

Petitioner agrees to endorse this payment to the State of California.

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

GLEND A RUSSELL,)	
)	
)	
Petitioner,)	
)	
v.)	No. 18-515V
)	Chief Special Master Corcoran
)	ECF
SECRETARY OF HEALTH AND)	
HUMAN SERVICES,)	
)	
Respondent.)	

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

I. Compensation for Vaccine Injury-Related Items

On April 2, 2019, the Chief Special Master issued a Ruling on Entitlement finding that petitioner is entitled to vaccine compensation. Respondent proffers based on the evidence in the record that petitioner should be awarded \$52,500.00 plus \$293.44 for reimbursement of a Medicaid lien. This amount represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

II. Items of Compensation and Form of the Award

The parties recommend that the compensation provided to petitioner should be made through lump sum payments as described below, and request that the Chief Special Master’s decision and the Court’s judgment award the following:

A. Petitioner’s Damages

A lump sum payment of \$52,500.00 (for past and future pain and suffering), in the form of a check payable to petitioner, Glenda Russell. This

amount accounts for all elements of compensation under 42 U.S.C. § 300aa-15(a) to which petitioner would be entitled.

B. Medicaid Lien

Respondent proffers that petitioner should be awarded funds to satisfy the State of California Medicaid lien in the amount of \$293.44, which represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the state of California may have against any individual as a result of any Medicaid payments that the State of California has made to or on behalf of Glenda Russell from the date of her eligibility for benefits through the date of judgment in this case as a result of her vaccine-related injury suffered on or about October 25, 2016, under Title XIX of the Social Security Act. Reimbursement of the State of California lien shall be made through a lump sum payment of \$293.44, representing compensation for satisfaction of the State of California lien, payable jointly to petitioner, and

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Petitioner agrees to endorse this payment to the State of California.

C. Guardianship

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

III. Summary of Recommended Payments Following Judgment

A. Lump sum paid to petitioner	\$52,500.00
B. Reimbursement of Medicaid lien	\$293.44

Respectfully submitted,

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Assistant Attorney General

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Acting Director
Torts Branch, Civil Division

CATHARINE E. REEVES
Deputy Director
Torts Branch, Civil Division

ALEXIS B. BABCOCK
Assistant Director
Torts Branch, Civil Division

s/Laurie Wiesner
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DATE: February 18, 2020